

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0673**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 22, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible to receive unemployment insurance benefits from June 13, 2025 through September 2, 2025, a school recess period, because the employer was an educational institution, and claimant's wages and hours from non-educational employers were not sufficient to entitle him to benefits during the break (decision # L0012056938). Claimant filed a timely request for hearing. On October 20, 2025, ALJ Blam conducted a hearing at which the employer failed to appear, and on October 28, 2025 issued Order No. 25-UI-308596, modifying decision # L0012056938 by concluding that claimant was ineligible to receive benefits during the break, and therefore was denied benefits for the weeks of June 15, 2025 through August 30, 2025 (weeks 25-25 through 35-25). On November 7, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing.

The parties may offer new information, such as the information in claimant's written argument, into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

**FINDINGS OF FACT:** (1) On March 31, 2025, claimant filed an initial claim for unemployment insurance benefits, with an effective date of March 30, 2025. The Department determined that claimant's claim was monetarily valid, with a base year of January 1, 2024 through December 31, 2024 and a weekly benefit amount of \$638.

(2) Claimant had base year wages from four employers. Three of these employers were public school districts that the Department had determined to be educational employers. The Department did not consider the fourth employer, EduStaff, to be an educational employer. EduStaff reported \$3,616.35 in wages and 128 hours for claimant's base year, all in the second quarter of 2024. Claimant had no other wages from non-educational employers during his base year, and the Department determined that claimant's base-year wages and hours from EduStaff were not, by themselves, sufficient to form a monetarily valid claim.

(3) During the 2024-2025 academic year, Oregon City School District 62 ("the employer") employed claimant as a substitute teacher. Claimant worked for the employer nearly every day of that academic year, and earned more than his weekly benefit amount in wages from the employer for at least one week of the year.

(4) At some point in 2025, the employer issued claimant a letter requesting his signature to indicate that he would be returning to work for them in the same or similar capacity for the 2025-2026 academic year. Based on this letter, claimant expected to return to work for the employer as a substitute teacher in the 2025-2026 academic year.

(5) The employer's break between academic terms started on June 13, 2025 and ended on September 2, 2025. Claimant claimed benefits for the weeks of June 15, 2025 through August 30, 2025 (weeks 25-25 through 35-25). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(6) On September 2, 2025, claimant returned to work for the employer as a substitute teacher.

**CONCLUSIONS AND REASONS:** Order No. 25-UI-308596 is set aside and this matter remanded for further development of the record.

Benefits based on services for an educational institution performed in an instructional, research or principal administrative capacity will not be paid "for any week of unemployment commencing during the period between two successive academic years" or terms, "if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any institution in the second of such academic years or terms." ORS 657.167(1). Such benefits will be denied if: (1) the weeks claimed begin during a period between two academic terms; (2) claimant was not "unemployed" during the term before the recess period; and (3) there is reasonable assurance of work during the term following the recess period. ORS 657.167(2).

ORS 657.221 was amended, effective January 1, 2024, to extend eligibility for benefits during school recess periods to employees working for an educational institution if they are not primarily employed in an instructional, research, or principal administrative capacity. ORS 657.221 reads as follows:

(1) Benefits based on services performed in other than an instructional, research or principal administrative capacity for an educational institution or institution of higher education shall be payable to an individual in the same amount, on the same terms and

subject to the same conditions as benefits payable on the basis of other service subject to this chapter.

\* \* \*

Thus, an employee of an educational institution who performs services in other than an instructional, research or principal administrative capacity is eligible for benefits during break or recess periods regardless of whether their employer has provided them with reasonable assurance to return to work, if the employee meets all other eligibility criteria each week they claim benefits.

Per OAR 471-030-0074(4)(b) (April 20, 2022), as relevant here, ORS 657.167 applies when the individual claiming benefits was “not unemployed,” as defined by ORS 657.100(1), during the term prior to the recess period at issue.<sup>1</sup>

OAR 471-030-0075 (April 29, 2018) states:

(1) The following must be present before determining whether an individual has a contract or reasonable assurance:

(a) There must be an offer of employment, which can be written, oral, or implied. The offer must be made by an individual with authority to offer employment.

(b) The offer of employment during the ensuing academic year or term must be in the same or similar capacity as the service performed during the prior academic year or term. The term ‘same or similar capacity’ refers to the type of services provided: i.e., a ‘professional’ capacity as provided by ORS 657.167 or a ‘nonprofessional’ capacity as provided by ORS 657.221.

(c) The economic conditions of the offer may not be considerably less in the following academic year, term or remainder of a term than the employment in the first year or term. The term ‘considerably less’ means the employee will not earn at least 90% of the amount, excluding employer paid benefits, than the employee earned in the first academic year or term, or in a corresponding term if the employee does not regularly work successive terms (i.e. the employee works spring term each year).

\* \* \*

(3) An individual has reasonable assurance to perform services during the ensuing academic year, term, or remainder of a term when:

---

<sup>1</sup> An individual is deemed “unemployed” in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual’s weekly benefit amount. ORS 657.100(1).

(a) The agreement contains no contingencies within the employer's control. Contingencies within the employer's control include, but are not limited to, the following:

- (A) Course Programming;
- (B) Decisions on how to allocate available funding;
- (C) Final course offerings;
- (D) Program changes;
- (E) Facility availability; and
- (F) Offers that allow an employer to retract at their discretion.

(b) The totality of circumstances shows it is highly probable there is a job available for the individual in the following academic year or term. Factors to determine the totality of the circumstances include, but are not limited to:

- (A) Funding, including appropriations;
- (B) Enrollment;
- (C) The nature of the course (required or options, taught regularly or sporadically);
- (D) The employee's seniority;
- (E) Budgeting and assignment practices of the school;
- (F) The number of offers made in relation to the number of potential teaching assignments; and
- (G) The period of student registration.

(c) It is highly probable any contingencies not within the employer's control in the offer of employment will be met.

\* \* \*

Claimant worked for the employer as a substitute teacher during the 2024-2025 academic year, and earned more than his weekly benefit amount during at least one week of that year. As such, claimant was "not unemployed" for purposes of 657.167 and ORS 657.221. Thus, whether claimant was eligible for benefits during the employer's break between academic years turns on two questions: whether claimant's work for the employer was performed in an instructional, research or principal administrative

capacity; and, if so, whether claimant had reasonable assurance of returning to work for the employer in the following academic year.

The order under review concluded, first, that claimant had been working for the employer in an instructional capacity, explaining,

Since the employer was an education service district<sup>2</sup> and claimant was their employee who worked in an instructional capacity as a substitute teacher, ORS 657.167(1) and (2) apply to claimant. See Oregon Employment Department, UI Benefit Manual § 536 (Rev. 08/02/02) (***“Instructional—This category includes anyone teaching students in formal classroom and seminar situations, as well as substitute teachers and people who tutor students in independent research and learning.”***).

Order No. 25-UI-308596 at 4 (emphasis in original). In concluding that claimant had been working in an instructional capacity, the order under review relied on the above passage from a 2002 revision of the Department’s UI Benefit Manual, which has been superseded by the Department’s Unemployment Insurance Policy Guide, revised October 2025 (herein, “UI Policy Guide”). The latter does not categorically define teachers or substitute teachers as working in an instructional capacity. Instead, it offers the following criteria as examples of duties performed in an instructional capacity:

Preparing curriculum.

Assessing and directing learning, which can be in:

- Class
- Small groups
- Individual situations
- The library
- Guidance and counseling

UI Policy Guide at 190. That guidance further explains that “Fact gathering of the claimant’s ‘actual’ duties performed in the base year, will determine whether the majority of the claimant’s job has them performing ‘instruction’.” UI Policy Guide at 190. ORS 342.120(6) similarly defines “instruction” to include “preparation of curriculum, assessment and direction of learning in class, in small groups, in individual situations, online, in the library and in guidance and counseling.” Thus, claimant’s job title alone is insufficient to determine whether he was acting in an instructional capacity, such that the provisions of ORS 657.167(2) would automatically apply to his circumstances.

The record itself contains little detail of what claimant’s duties were during the 2024-2025 academic year. At hearing, the Department’s witness testified that during the fact-finding which was used in the issuance of decision # L0012056938, both claimant and the employer reported that “claimant’s job duties entail[ed] instructing more than 50 percent of the time[.]” Audio Record at 14:40. Claimant

---

<sup>2</sup> The record does not show that the employer was an education service district. Although the employer did not appear at the hearing, and no evidence was offered on this point, it can be reasonably inferred from the employer’s name and claimant’s work for them as a substitute teacher that the employer was a *school* district, not an education service district. See generally ORS 334.003(2). To the extent that this distinction becomes relevant on remand, the ALJ should develop the record to determine which type of organization the employer was.

likewise testified that his duties consisted of “every duty that the regular licensed full-time teacher would have done in their classroom[.]” Audio Record at 24:10. While both of these points suggest that claimant was performing services for the employer in an instructional capacity, further development of the record is necessary. On remand, the ALJ should inquire as to the specific duties that claimant performed as a substitute teacher for the employer during the 2024-2025 academic year, including what percentage of time claimant devoted to each of these duties. Additionally, to the extent that claimant offers evidence on this point which appears to contradict either what he had originally reported to the Department or what he had stated in the above-referenced testimony, the ALJ should ask claimant to explain any such inconsistencies and, if necessary, weigh any conflicting evidence and credibility as necessary.

The record should next be further developed to determine whether, and when, claimant had reasonable assurance of returning to work in the following academic year. The order under review concluded that the letter that the employer sent to claimant, requesting his signature to indicate that he would be returning to work for them in the same or similar capacity for the 2025-2026 academic year, was sufficient to show that claimant had reasonable assurance of returning to work that year. Order No. 25-UI-308596 at 5. In so concluding, the order under review relied on *Slominski v. Employment Division*, 77 Or. App. 142 (1985) and *Johnson v. Employment Division*, 59 Or. App. 626 (1982) for the proposition that such letters were, by themselves, sufficient to constitute reasonable assurance. Order No. 25-UI-308596 at 5. This reliance is misplaced.

The Court of Appeals held in *Slominski* that that a form letter notifying the claimant of intent to re-employ them as a substitute teacher for the next academic year suffices and reasonable assurance does not require “a mutual commitment to future employment.” 77 Or. App. at 147. However, as the Court explained in *Slominski*, the “primary issue” in that case was “whether [the] claimant had a reasonable assurance of performing services in the [following] school year ‘in the same or similar capacity as during the [preceding] school year.’” 77 Or. App. at 145. Accordingly, the analysis in that case primarily focused on the type and amount of work that claimant performed in the two academic years. The Court’s reasoning did not address (or even acknowledge) several of the other factors listed under OAR 471-030-0075 to determine whether the claimant in that case had reasonable assurance.

As of the date of this decision, the version of OAR 471-030-0075 in effect in 1985 is not available for review. As such, it is not clear whether the factors currently listed under OAR 471-030-0075 were in effect at the time that *Slominski* was issued.<sup>3</sup> Even if they were in effect at that time, however, it strains credulity to suggest that the holding in *Slominski* (or the similar holding in *Johnson*) was intended to read those factors out of the rule. Instead, those holdings are properly read to narrowly apply to the specific factors at issue in those cases. Thus, in order to determine whether claimant had reasonable assurance in this matter, all of the relevant factors listed under OAR 471-030-0075 must still be considered. The record as developed is insufficient to make such a determination.

On remand, the ALJ should develop the record to show, first, when the employer issued the letter to claimant which suggested that he would be permitted to return to work for them in the 2025-2026 academic year. This is relevant because reasonable assurance only exists once, among other factors, the

---

<sup>3</sup> Notably, OAR 471-030-0075 is not mentioned once in either *Slominski* or *Johnson*, although the rule first took effect in 1976.

employer has actually made an offer of employment.<sup>4</sup> Next, the ALJ should inquire as to whether, under OAR 471-030-0075(1)(c), the economic conditions of the offer for the 2025-2026 academic year were “considerably less” (i.e., less than 90 percent) than claimant’s compensation in the 2024-2025 academic year. Note that because the nature of substitute teaching is inherently unpredictable as to the amount of work that will be offered in the future,<sup>5</sup> it is not necessary to determine on remand how many days or hours the employer offered to claimant for the following academic year. Instead, to determine whether the economic conditions were “considerably less,” the ALJ should inquire only as to the *rate* of pay for both academic years. Finally, the ALJ should develop the record to show whether the factors considered under OAR 471-030-0075(3) constituted reasonable assurance in claimant’s circumstances.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary to decide whether claimant was eligible to receive benefits during the employer’s school recess period, Order No. 25-UI-308596 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

**DECISION:** Order No. 25-UI-308596 is set aside, and this matter remanded for further proceedings consistent with this order.

D. Hettle and A. Steger-Bentz;  
S. Serres, not participating.

**DATE of Service: December 12, 2025**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-308596 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

---

<sup>4</sup> *See Nickerson v. Employment Department*, 250 Or App 352, 280 P3d 1014 (2012) (school recess law “uses the present tense: a claimant is disqualified during recess periods in which ‘there is a reasonable assurance’ of employment in the next year”; there is no provision in the law “allowing the department to deny benefits that, having been earned (in the sense of having been qualified for), are later declared to be unearned due to changed circumstances”).

<sup>5</sup> *See Slominski*, 77 Or. App. at 146.



# Understanding Your Employment Appeals Board Decision

## English

**Attention** – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

## Simplified Chinese

**注意** – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Traditional Chinese

**注意** – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Tagalog

**Paalala** – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

## Vietnamese

**Chú ý** - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

## Spanish

**Atención** – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

## Russian

**Внимание** – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.



## Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

## Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

## Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

## Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: [appealsboard@employ.oregon.gov](mailto:appealsboard@employ.oregon.gov)

Website: [www.Oregon.gov/employ/pages/employment-appeals-board.aspx](http://www.Oregon.gov/employ/pages/employment-appeals-board.aspx)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.